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C. John Brannon
Woodard, Emhardt, Naughton,
Moriarty and McNett
Bank One Center/Tower
111 Monument Circle, Suite 3700
Indianapolis IN 46204-5137

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OFFICE OF PETITIONS

In re Application of :
Harold Bennett : DECISION ON PETITION
Application No. 09/994,560 :
Filed: November 27, 2001 :
Atty Docket No. 31088-2 :

This is a decision on the RENEWED PETITION UNDER 37 C.F.R.
§ 1.137(B) filed June 8, 2009.

The petition under 37 CFR 1.137(b) is GRANTED.

The above-identified application became abandoned for failure to file a reply to the final Office action mailed January 15, 2003. This Office action set a shortened statutory period for reply of three (3) months, with extensions of time obtainable under § 1.136(a). No reply considered received and no extension of time considered obtained, this application became abandoned effective April 16, 2003. A courtesy Notice of Abandonment was mailed on November 28, 2003.

By decision mailed April 8, 2009, the initial petition under 37 CFR 1.137(B), as well as petitions under 37 CFR 1.182 and 1.137(a), were dismissed. The petition under 37 CFR 1.182 was dismissed as the provisions of 37 CFR 1.181 and 1.137 provide for the relief requested. However, it was determined that withdrawal of the holding of abandonment pursuant to 37 CFR 1.181 was not warranted, given the extended period of

abandonment. Further, pursuant to the provisions of 37 CFR 1.137, it was concluded that the entire delay was neither established to be unavoidable or unintentional. Ultimately, the Office concluded that proof that the response was timely filed by facsimile supports a conclusion that the initial delay was unintentional. However, the Office requested additional explanation as to why the entire delay in filing a response to the Office action and in filing a petition should be considered unintentional (or unavoidable).

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in 37 C.F.R. § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional, and;
- (4) Any terminal disclaimer (and fee as set forth in 37 C.F.R. § 1.20(d)) required pursuant to paragraph (d) of this section.

With this renewed petition, Petitioner has submitted additional statements and evidence to support a conclusion that the delay in filing a petition was unintentional. This evidence is submitted to show that applicant believed the application to be pending and that the delay in filing a petition was unintentional. Having considered the renewed petition, it is concluded that petitioner has established that the entire period of delay was unintentional within the meaning of 37 CFR 1.137(b). A copy of the reply to the Office action as applicant maintains it was previously filed May 15, 2003 (Exhibit A), accompanied the petition filed July 16, 2008. Pursuant to the authorization set forth in the revised petition filed December 2, 2008, the petition fee is being charged to Deposit Account No. 23-3030. No terminal disclaimer is required.

Thus, all requirements of §1.137(b) have now been satisfied.

Technology Center 1714 has been advised of this decision. The application is thereby forwarded to the Technology Center for further action in light of this decision, including consideration of the amendment dated May 15, 2003, submitted on petition filed July 16, 2008.

Telephone inquiries regarding this decision should be directed to Senior Petitions Attorney Nancy Johnson at (571) 272-3219. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.



Chris Bottorff
Supervisor
Office of Petitions